S.B. CIVIL WRIT PETITION NO.5802/2005
Mohammed Ali
vs
State of Rajasthan & Ors.

DATE OF ORDER : - 13.7.2007

HON'BLE MR.PRAKASH TATIA,J.

Mr.Sajjan Singh, for the petitioner.
Mr.RK Singhal, for the respondent.
Mr.OP Boob, Addl. GA.

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Heard learned counsel for the parties.

The petitioner initially filed a suit for permanent injunction, but it appears that during the pendency of the said suit, an order dated 8th Nov., 2004 was passed by the Gram Panchayat, Rohat by which the petitioner was conveyed that it has been decided that he should remove his all material from the land in question within three days otherwise Gram Panchayat will remove the petitioner's possession. Therefore, the petitioner filed the present writ petition to challenge the order dated 8th Nov., 2004.

Subsequent to that, the petitioner withdrew the suit with liberty to proceed with the writ petition. Thereafter, the petitioner submitted an application that the petitioner has been dispossessed from the land in dispute and, therefore, the possession may be restored to the petitioner. That application got dismissed by the petitioner as withdrawn. The petitioner, thereafter, submitted the

present application for seeking permission to withdraw the writ petition so that he may file the civil suit for appropriate reliefs.

Learned counsel for the respondent Shri RK Singhal vehemently opposed this prayer on the ground that if there is any fresh cause of action then there is no need to grant any permission for filing the suit to the petitioner and if the petitioner is having any right originally on accrual of cause of action then at that time how he withdrew the suit and now he wants to withdraw the writ petition for filing fresh suit. In such situation, there is no justification for grant of permission to file fresh suit.

I considered the submissions of learned counsel for the parties and perused the facts of the case. It appears from the facts of the case that, in fact, several disputed questions of facts are involved. Initially, the petitioner averred that he was in possession of the property in dispute and subsequently, during the pendency of this writ petition, he admitted that either from whole of the land or from the part of the land he was dispossessed by the respondents. Then there are two fold reliefs, which can be claimed by the petitioner, one for restoration of possession after disclosing his right for possession and for injunction. In that situation, the original cause of action was the threat when petitioner was threatened by the respondents with respect to his plot. The petitioner even after dispossession could have amended the suit or can file fresh suit for possession. In the totality it is a case where the civil suit was the

only proper remedy.

In view of the above reasons since this writ petition itself except for challenge to the order dated 8th Nov., 2004 was not maintainable for any other relief and since the petitioner earlier withdrew the suit, therefore, to avoid any legal complications of bar against the subsequently filed suit, the permission is granted to withdraw the writ petition with liberty to file fresh suit.

Hence, the writ petition of the petitioner is dismissed as withdrawn with liberty to file fresh suit in accordance with law. It is also observed that the respondents shall be free to raise all legal objections, factual as well as legal objections.

However, in the facts and circumstances of this case, both the parties shall maintain status quo for four weeks.

(PRAKASH TATIA), J.

c.p.goyal/-